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Gregory J. Norsworthy

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BELL, BOYD & LLOYD LLP
P.O. Box 1135
CHICAGO, IL 60690

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/882,198
Filing Date: June 15, 2001
Appellant(s): NORSWORTHY ET AL.

Robert M. Barrett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 21, 2007 appealing from the Office action mailed June 28, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6416270 B1	Steury et al.	7-2002
6681717 B2	Burghardi et al.	1-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1 – 4 and 6 – 11** are rejected under 35 U.S.C. 102(e) as being anticipated by **Steury et al. (US Patent 6,416,270 B1)**.

3. In regards to **claim 1**, **Steury** discloses a kiosk configured for selling and manufacturing customized food for a pet, said kiosk comprising:

a customer interface area for receiving information regarding the pet (**Column 4 Lines 38 – 39**);

a biological sample analysis and handling area for analyzing the biological information regarding the pet (**Column 4 Lines 17 – 19; moreover, each storage unit, tray, as well as the top of the kiosk is capable of providing an area for an individual to work on**);

a computer for receiving information regarding the pet and generating a pet profile (**Column 3 Lines 60 – 62; Column 4 Lines 38 – 39**);

a base product display area (**Column 4 Lines 16 – 18**);

at least one product additive storage area having at least one shelf (**Column 2 Lines 14 – 18**); and

an ingredient mixing and customer observation area (**Column 4 Lines 17 – 19**; moreover, each storage unit, tray, as well as the top of the kiosk is capable of providing an area for an individual to work on).

4. In regards to **claim 2**, **Steury** discloses wherein said biological sample analysis and handling area is configured with a biological sample disposal area (**Column 2 Lines 1 – 2, 62 – 65**; wherein the kiosk is capable of receiving items from a customer and held, which would then be disposed of, if necessary, by a personnel).

5. In regards to **claim 3**, **Steury** discloses wherein said kiosk is further configured to be expanded or contracted (**Column 3 Lines 56 – 57**).

6. In regards to **claim 4**, **Steury** discloses wherein said kiosk is further configured to be portable (**Claim 1 Part A**).

7. In regards to **claim 6**, **Steury** discloses further comprising a base product storage area (**Column 2 Lines 14 – 18**).

8. In regards to **claim 7**, **Steury** discloses wherein said kiosk is constructed from at least one of wire shelving, stainless steel supports, plastic bins, and laminated wood and stainless steel shelving (**Column 3 Lines 1 – 7**).

9. In regards to **claim 8**, **Steury** discloses wherein said at least one product additive storage area is stocked with at least one of a dry inventory and a liquid inventory (**Column 5 Lines 19 – 21**).

10. In regards to **claim 9**, **Steury** discloses wherein said kiosk comprises three separate units, including at least one of a consumer interaction station (**Column 2 Lines 4 Lines 38 – 39**), an analysis station (**Column 2 Lines 6 – 9**), and a workstation (**Column 2 Lines 31 – 34**).

11. In regards to **claim 10**, **Steury** discloses further comprising a computer configured to store at least one custom pet food for an individual pet profile (**Column 3 Lines 60 – 62; Column 5 Lines 58 – 64**).

12. In regards to **claim 11**, **Steury** discloses further comprising graphics panels to advertise said kiosk and the functionality of said kiosk (**Column 4 Lines 47 – 57**).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Steury et al. (US Patent 6,416,270 B1)**.

15. In regards to **claim 5**, **Steury** discloses wherein said kiosk is further configured to be locked (**Column 4 Lines 21 – 22**).

Steury fails to disclose covering the kiosk. However, it is old and well known that it is common business practice to provide some covering for portable kiosks for added security/privacy, such as the kiosks that are found in malls.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide a covering for a kiosk, such as the one disclosed by Steury, to provide an added security measure.

16. **Claims 12 – 15 and 17 – 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Burghardi (US Patent 6,681,717 B2)**.

17. In regards to **claim 12**, **Burghardi** discloses a method comprising:

providing the kiosk including at least at least one of a consumer interaction station, an analysis station, and a workstation (**Column 3 Lines 32 – 34; Column 7 Lines 51 – 54**);

providing a questionnaire at the consumer interaction station for profiling pets (**Column 2 Lines 27 – 30**);

performing an analysis of a biological sample for a pet at the analysis station (**Column 2 Lines 46 – 59; Column 4 Lines 6 – 10**);

receiving a customized pet food product formula based on the questionnaire answers and the biological sample at the analysis station (**Column 2 Lines 27 – 30**);
and

preparing a sample of the customized product for the consumer at the workstation (**Column 3 Lines 17 – 22**).

Burghardi does not explicitly show a method of marketing, however, it would have been obvious to one skilled in the art that in order for producers, such as farmers, to know of the teachings of Burghardi that some type of marketing or advertisement must be present in order to carry out the invention. Further still, prior teachings of

customizing feed has also been known in the art as well, as is discussed in the background of the Burghardi.

18. In regards to **claim 13**, **Burghardi** discloses further comprising storing results of the questionnaire and the biological sample analysis as a pet profile at the analysis station (**Column 2 Lines 24 – 30**).

19. In regards to **claim 14**, **Burghardi** discloses further comprising using the pet profile stored at the analysis station to prepare additional portions of the product additive at the workstation for repeat consumers (**Column 7 Lines 58 – 67 – Column 8 Lines 1 – 13**).

20. In regards to **claim 15**, **Burghardi** discloses wherein preparing a sample of the customized product at the workstation further comprises preparing a custom product additive to be added to a base formula (**Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8**).

21. In regards to **claim 17**, **Burghardi** discloses wherein preparing a sample of the customized product comprises adding at least one of a dry product additive and a liquid additive to the base formula (**wherein it is inherently included that the various ingredients making up the custom feed would contain a combination of dry, liquid, or combination of dry and liquid; all of which are well known in the art**).

22. In regards to **claim 18**, **Burghardi** discloses wherein receiving a customized pet food product formula further comprises modeling questionnaire responses and the analysis of the biological sample (**Column 7 Lines 49 – 57**).

23. In regards to **claim 19**, **Burghardi** discloses wherein performing an analysis of a biological sample for a pet comprises performing the analysis using a computer located at the analysis station **(Column 3 Lines 23 – 33)**.

24. In regards to **claim 20**, **Burghardi** discloses a method for providing a customized food product for a pet using a kiosk, the method comprising:

providing the kiosk including at least one of a customer interface area, a biological sample analysis and handling area, a base product storage area, at least one product additive storage area, and an ingredient mixing and customer observation area **(Column 3 Lines 32 – 34)**;

receiving at least one of a biological sample and pet questionnaire information at the customer interface area **(Column 2 Lines 27 – 30, 46 – 59; Column 4 Lines 6 – 10)**;

processing the data from the sample and the questionnaire at the biological sample analysis and handling area **(Column 2 Lines 46 – 59; Column 4 Lines 6 – 10)**;

selecting a kibble from the base product storage area based on the processed data **(Column 3 Lines 17 – 22)**;

mixing a customized additive from ingredients stored in the product additive storage area at the ingredient mixing and customer observation area based on the processed data **(Column 1 Lines 8 – 12; Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8)** ; and

presenting the selected kibble and the customized additive to the customer at the ingredient mixing and customer observation area (**Column 4 Lines 51 – 67 – Column 5 Lines 1 – 8**).

However, Burghardi does not explicitly disclose the use of a kiosk. Nevertheless, Burghardi discloses the use of a workstation(s), and the like, (**Column 3 Lines 32 – 34**) and one skilled in the art of computer workstations would have found it obvious that such the workstation disclosed by Burghardi is indeed a kiosk. Burghardi discloses the workstation(s) that can be used in various locations, such as at the ingredient supplier or farm (**Column 3 Lines 23 – 34**), and that it serves as an interface for a user in order to input information for the production of a custom feed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention that Burghardi does indeed provide a kiosk that includes a customer interface so that information can be inputted to produce a custom feed for a specific animal/need.

25. In regards to **claim 21**, **Burghardi** discloses wherein processing the data from the sample and the questionnaire further comprises generating feeding instructions and package labels (**Column 4 Lines 6 – 10**).

26. In regards to **claim 22**, **Burghardi** discloses wherein presenting the selected kibble and the customized additive further comprises providing feeding instructions and package labels to the customer (**Column 4 Lines 6 – 10**).

27. In regards to **claim 23**, **Burghardi** fails to disclose wherein presenting the selected kibble and the customized additive further comprises presenting the customer

with a customized measuring scoop for the kibble and a custom-selected spoon for the customized additive.

However, it would have been obvious to one skilled in the art that some type of measuring device must be provided in order to properly deliver the appropriate quantity of feed to the animal/pet. Further still, Burghardi discloses that providing too much of a specific ingredient to an animal would produce unhealthy and possibly dangerous results (**Column 4 Lines 51 – 67**). Although Burghardi does present a solution to prevent too much of a specific ingredient to be incorporated in the overall quantity of the feed one skilled in the art, such as a farmer or veterinarian, would also know that overfeeding/underfeeding an animal is also unhealthy and that appropriate quantities must be measured out prior to the feeding.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Burghardi to provide a customized measuring cup and custom-selected spoon in order to properly measure the quantity of feeding to prevent overfeeding/underfeeding.

28. In regards to **claim 24**, **Burghardi** discloses wherein presenting the selected kibble and the customized additive further comprises presenting the customer with recommendations concerning frequency and conditions of future biological sample analyses and profile updates for their pet (**Column 9 Lines 10 – 33; Column 10 Lines 25 – 40; Column 11 Lines 47 – 51**).

29. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Burghardi (US Patent 6,681,717 B2)** in view of **Steury et al. (US Patent 6,416,270 B1)**.

30. In regards to **claim 16, Burghardi** fails to disclose further comprising affixing graphics panels to at least one of the consumer interaction station, the analysis station, and the workstation.

However, Steury discloses a kiosk configured to accept user input and dispense an item requested by the user. Steury teaches faceplates containing printed graphics, icons, and a display in order to instruct the user on how to use the kiosk (**Column 4 Lines 47 – 57**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Burghardi in view of the teachings of Steury to provide graphics on a kiosk station in order to instruct a user on how to properly use the various functions that the kiosk may provide.

(10) Response to Argument

Rejection under 35 USC §102(e)

Claims 1 – 4 and 6 – 11

31. In response to applicant's argument that "Steury fails to disclose a kiosk configured **for** selling and manufacturing customized food for a pet that includes a customer interface area **for** receiving information regarding the pet and a computer **for** receiving information regarding the pet and generating a pet profile and also includes areas **for** biological sampling and handling and ingredient mixing", a recitation of the

intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Rejection under 35 USC §103

Claims 5 and 16

32. Applicant argues that the “patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claim 5 that depends from Claim 1.” However, the Examiner has already responded to the arguments made towards claim 1 and asserts the rejection is proper. As a result, the rejection under claim 5 is proper and, further still, the applicant has failed to explicitly point out any of the supposed errors of the rejection, as is required (37 CFR 1.111). The applicant also uses the same argument for claim 16. As a result, the Examiner’s response to claim 16 will be the same as the one made for claim 5.

Claims 12 – 15 and 17 – 24

33. Applicant argues the Burghardi fails to teach or suggest a method for marketing a food product for a pet using a kiosk. However, the Examiner asserts that proper reasoning and motivation has already been provided regarding this matter (see Page 6 of the Office Action).

The applicant further argues that Burghardi fails to disclose or suggest providing the kiosk including at least one of a consumer interaction station, an analysis station, and a workstation. The applicant submits that providing a computer in a workstation is

not the same as, for example, providing a kiosk including at least one of a consumer interaction station, an analysis station and a workstation. However, the Examiner asserts that it is obvious that the workstation (computer) disclosed by Burghardi is indeed a workstation (Col. 3 Lines 23 – 34). As a result, wherever that analysis is performed the computer must be present and would obviously be placed on some type of surface to carryout the analysis where consumer interaction (for example with a farmer) would be carried out.

The applicant further argues that Burghardi fails to disclose a method for producing a customized product **for a pet** and that Burghardi is only directed to farm livestock. However, the Examiner asserts that farm livestock are also pets for many farmers. For example, it is well known for pigs to be pets for many individuals and not only just for farmers. Therefore, Burghardi does, indeed, disclose a method for producing a customized product for a pet.

The applicant also argues that Burghardi fails to disclose or suggest analyzing a biological sample. However, the Examiner asserts that Burghardi discloses that a pet profile is created and with the use of the pet profile the user is then able to create customized feed for that particular animal. Burghardi further discloses that the method for determining the customized feed entails a method for storing animal data representative of the characteristics of the animal. That is to say, the profile data representative of a nutrient profile for the animal is generated based upon animal data. As a result, it is asserted that one having ordinary skill in the art would have found it obvious to analyze a pet's biological sample in order to accurately analyze a pet's diet in

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order to better create a customized pet feed. Further still, applicant even admits that Burghardi is directed to a customized feed product for an animal that produces food or dairy products (**See Page 17 of filed Appeal Brief**). Consequently, the Examiner asserts that in order to ensure that the dairy produced (biological sample), such as milk from a cow, is meeting specified standards the dairy would need to be analyzed in order for a farmer to properly analyze if the current feed is providing the sufficient vitamins, for example, to provide quality milk and is meeting specified standards.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gerardo Araque Jr.

/G. A./

3/10/2008

Conferees:

Janice Mooneyham

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3629

Vincent Millin

/Vincent Millin/

Appeals Practice Specialist

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